

**Roswil, Inc. d/b/a Ramey Supermarkets and Congress of Independent Unions. Case 17-CA-15900**

June 6, 1994

**DECISION AND ORDER**

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On September 29, 1993, Administrative Law Judge Steven M. Charno issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The Board has delegated its authority in this proceeding to a three-member panel.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.<sup>2</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Roswil, Inc. d/b/a Ramey Supermarkets, Houston, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent excepts to the judge's decision, asserting that it evidences bias and prejudice. Upon our full consideration of the entire record in this proceeding, we find no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated bias against the Respondent in his analysis and discussion of the evidence.

<sup>2</sup> Although he agrees with the judge that deferral to the arbitral process is not warranted on the facts here, Member Devaney would generally support deferral to the arbitral process even in those cases where it does not provide complete make-whole relief.

In declining to defer to the arbitral process here, Member Devaney underscores the express restriction on backpay in the contractual grievance and arbitration procedure; the Respondent's hostility to the exercise of employee rights as manifested in its 8(a)(1) threat to Shirley Holbrook; and the Union's refusal to proceed with Floyd's grievance until the Board decides this matter. Cf. *Cone Mills Corp.*, 298 NLRB 661, 667 fn. 19 (1990).

*Mary Taves, Esq.*, for the General Counsel.

*Donald Jones, Esq. (Hulston, Jones, Gammon & Marsh)*, of Springfield, Missouri, for the Respondent.

*Robert G. Raleigh, Esq. (Hoagland, Fitzgerald, Smith & Pranaitis)*, of Alton, Illinois, for the Charging Party.

**DECISION**

STEVEN M. CHARNO, Administrative Law Judge. In response to charges filed by Vicki Floyd, a complaint was issued on December 26, 1991, and was amended on May 14 and 22, and July 14, 1992. The amended complaint alleged that Roswil, Inc. d/b/a Ramey Supermarkets (Respondent) violated the National Labor Relations Act (the Act) by threatening an unnamed employee and by terminating Floyd on October 31, 1991, for engaging in protected concerted activities. Respondent's answers denied the commission of any unfair labor practice.

A hearing was held before me in Springfield, Missouri, on July 30, August 20, and September 30, 1992. Briefs were thereafter filed by the General Counsel and Respondent under extended due date of December 31, 1992.

**FINDINGS OF FACT**

**I. JURISDICTION**

Respondent is a corporation engaged in the retail sale of groceries and related products with an office and place of business in Houston, Missouri. Respondent, in the course of its operations in Missouri during the 12-month period ending November 30, 1991, derived gross revenues in excess of \$500,000 and purchased and received goods valued in excess of \$50,000 from points outside the State. It is admitted, and I find that, Respondent is an employer engaged in commerce within the meaning of the Act.

The Congress of Independent Unions (the Union) is admitted to be, and I find is, a labor organization within the meaning of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES<sup>1</sup>**

**A. Affirmative Defenses**

**1. Factual background**

Respondent and the Union are parties to a collective-bargaining agreement effective by its terms from October 30, 1991, through October 29, 1994. Article 11 of that agreement sets forth a grievance and arbitration procedure which the parties have employed to good effect over a number of years.<sup>2</sup> Section 4(f) of article 11 limits the amount of an arbitrator's backpay award to 20 days' compensation.

On November 1, 1991,<sup>3</sup> Floyd filed a grievance with Respondent and the Union concerning her October 31 discharge. Respondent is willing to arbitrate that grievance pursuant to the provisions of the parties' collective-bargaining agreement, but the Union has refused to do so until the instant unfair labor practice proceeding has been concluded.<sup>4</sup>

Floyd signed and filed with the Board an unfair labor practice charge on November 12 and an amended charge on December 30.<sup>5</sup> Due to an error by the Board's staff, both charges identified the Union as the Charging Party. Although Floyd did not have the authority necessary to bind the Union

<sup>1</sup> Except as indicated, the following facts are undisputed.

<sup>2</sup> Richard Taylor credibly so testified without controversy.

<sup>3</sup> All dates hereinafter are 1991 unless otherwise indicated.

<sup>4</sup> Richard Taylor credibly so testified without controversy.

<sup>5</sup> The Board's records reflect that an identical amended charge was filed on May 12, 1992.

at the time she signed the charges, the Union subsequently adopted and ratified her ultra vires acts.<sup>6</sup>

The December 26 complaint alleged, in pertinent part, that Floyd was discharged because she “engaged in concerted activities,” while the July 14, 1992 third amendment to complaint more specifically alleged that she was terminated for complaining about the impact of her store manager’s actions on employee working conditions.

## 2. The pleadings

In a May 15, 1992 motion and in its answers to two of the amendments to the complaint, Respondent appears to contend that, because Floyd did not file the charges which gave rise to this case as an individual and she did not initially have authority to file them on behalf of the Union, “no proper and lawfully authorized charge was filed . . . within six months of the alleged violation” as required by Section 10(b) of the Act. On this basis, Respondent argues that the third amendment to complaint “is not based on a charge timely filed” and should be dismissed. Respondent also argues that dismissal of the third amendment to complaint is required because the cause for Floyd’s discharge alleged therein is “an unlawful variance from the violations” alleged in the original complaint.

Turning first to the latter argument, I conclude that the July 14, 1992 allegation of discharge for a specific protected concerted activity is not significantly at variance with the December 26 allegation of termination for engaging in protected concerted activity in general. Similarly, I do not find Respondent’s arguments concerning Section 10(b) of the Act to be well-founded. It is certainly inappropriate to penalize Floyd for an error made by the Board employee who prepared the charges in response to information given by Floyd. This is all the more true given the fact that the technical defect<sup>7</sup> resulting from the Board’s error was subsequently cured by the Union. Accordingly, I find that the charges were timely filed and reject Respondent’s 10(b) argument.

## 3. Deferral

Respondent argues that the Board in this case should “re-evaluate and extend” the arbitration deferral doctrine established in *Collyer Insulated Wire*, 182 NLRB 837 (1971), and that the Board therefore should stay consideration of the unfair labor practice charges filed in this proceeding and defer to an arbitrated resolution of the disputed matters pursuant to the grievance and arbitration procedure created by the parties’ collective-bargaining agreement. It is well settled that deferral under *Collyer* is appropriate when (1) the disputed issues are susceptible of resolution under the grievance and arbitration procedure agreed to by the parties and (2) there is no reason to believe that the use of that procedure would resolve those issues in a manner incompatible with the purposes of the Act. *Ironworkers District Council*, 292 NLRB 562, 578 (1989); *Eastman Broadcasting Co.*, 199 NLRB 434, 437 (1972). The General Counsel argues that deferral to arbitration is inappropriate when an arbitrator cannot fully rem-

edy the alleged violations of the Act, see *Ironworkers District Council*, supra; *American Commercial Lines*, 291 NLRB 1066, 1074–1075 (1988), and that the terms of the parties’ collective-bargaining agreement prevents a complete remedy in this proceeding. Respondent replies that the restriction on backpay in the contractual grievance and arbitration procedure “is merely part of the encouragement for the Union and Grievant to promptly resolve issues.”<sup>8</sup> Because the contractual grievance and arbitration procedure at issue here indisputably prevents an arbitrator from granting the type of make-whole relief necessary to perpetuate the policies underlying the Act, I conclude that the reason for the backpay restriction is irrelevant to the question of deferral. Based on the foregoing discussion, I further conclude that deferral to arbitration is inappropriate under the facts of this case.

## B. The Merits

### 1. The complaint to management

On October 1, a union bargaining committee comprised of a business agent and employees Shirley Holbrook, Barbara Swacina, and Floyd met with Respondent’s president, Richard Taylor, in order to negotiate a new collective-bargaining agreement for Respondent’s store in Houston, Missouri. During a conversation which preceded the actual negotiations, Holbrook stated that Store Manager Mike Kempton had been showing favoritism to one of the employees, Barbara DeMaria. In response to Taylor’s questions, Floyd stated that DeMaria (1) had been paid for 2 days she hadn’t worked, (2) had been tardy in reporting for work but had not been disciplined, (3) hadn’t reported for her scheduled hours during the prior Christmas season, (4) had keys to the cash registers and used them to clear her own mistakes, and (5) had worked at the store before and had been discharged for theft. Taylor secured DeMaria’s personnel file but was unable to find any record of prior employment. Floyd explained that DeMaria had used another name at the time. The employees then indicated that they were afraid Kempton would retaliate if he learned of their complaints concerning him and DeMaria. Taylor told them that he would check out the problem but his discussion with them concerning Kempton and DeMaria would remain confidential.<sup>9</sup> The parties then began substantive negotiations and reached an agreement later that day.

Pursuant to Taylor’s instructions, Jerry Iseminger, the store supervisor responsible for the area which included the Houston facility, visited that store on October 2 and met with

<sup>8</sup> While Respondent’s brief identifies sec. 6 of art. 11, it appears from context that sec. 4(f) was meant.

<sup>9</sup> Swacina’s testimony to this effect was precise and detailed. Holbrook and Floyd appeared to testify that their expressed fear of retribution by Kempton caused Taylor to pledge silence as to every complaint aired at the meeting, including dirty floors, insufficient breakroom chairs, and improper overtime ordered by Kempton’s co-manager. How Holbrook and Floyd envisioned that these complaints would be rectified without Kempton’s informed cooperation is unclear, as is the basis for their apparent belief that Kempton would be upset because someone else’s orders were a subject of complaint. I therefore find Swacina’s account to be the more probable.

<sup>6</sup> An admission to this effect was made by the attorney who appeared on behalf of the Union in its capacity as the Charging Party in this case.

<sup>7</sup> The record contains no suggestion that Respondent was in any way prejudiced by the error.

Kempton.<sup>10</sup> Later that morning, Swacina overheard a conversation between her supervisor, Charles Lord,<sup>11</sup> and Kempton. As Kempton came down the aisle in front of the meat department, he remarked to Lord, "I've had it, I'm going to get a new crew." Lord then turned to Swacina and asked "what did you girls say in that meeting?"<sup>12</sup>

On October 4, Swacina, who was scheduled to leave Respondent's employ the following day, was approached in the breakroom by Kempton who inquired whether anyone at the contract negotiations had said that Kempton was showing favoritism to one of the employees at the Houston store. When Swacina responded that "nothing like that was said," Kempton stated that he was in trouble with Iseminger and that the latter had mentioned favoritism.<sup>13</sup>

The next day, October 5, Swacina was again approached by Kempton who asked her who had said that he was taking 2-hour lunchbreaks with the night manager. Swacina replied that the matter had not been mentioned at the contract negotiations, and Kempton stated that Swacina could trust him and promised her "that it would never go anywhere else."<sup>14</sup>

## 2. The alleged threat

On or about October 10, Holbrook was working in a check stand at the front of the store. Tommy Venable, the store's comanager,<sup>15</sup> told her to call Kempton to the front of the store. Holbrook was busy and did not comply with Venable's instruction, but another employee did make the call. Kempton came to the front of the store, conferred with Venable and asked Holbrook to accompany him to the breakroom. Upon arrival at the breakroom, Kempton accused Holbrook of refusing to call him to the front of the store. Holbrook stated that she had been too busy to make the call, and Kempton said he didn't believe her.<sup>16</sup> Kempton told Holbrook that he didn't know what her problem was but that

<sup>10</sup>Swacina so testified in a specific and detailed manner, while Iseminger gave confused and internally inconsistent testimony to the contrary. Based on the demeanor of both witnesses and the fact that Swacina was a relatively disinterested witness at the time she testified, I credit her account over that of Iseminger.

<sup>11</sup>The record shows Lord to have hired, disciplined, and assigned work to employees, and I find him to be a supervisor within the meaning of the Act.

<sup>12</sup>Findings concerning the two exchanges involving Lord are based on Swacina's testimony. Lord, who demonstrated generally poor recollection of other events during October, confirmed in response to a leading question from Respondent's counsel that he did not "ask anybody about the meeting." Kempton, also in response to a leading question, was unable to recall making a statement that he was "going to clean house and fire a bunch of people." Because Swacina was the witness least interested in the outcome of this proceeding, because testimony on contested issues given in response to leading questions is of diminished probative value, and based on the witnesses' respective demeanor, I credit Swacina's cogent and detailed testimony over Lord's general denial and Kempton's purported inability to recall the conversation.

<sup>13</sup>Swacina credibly so testified without controversy. In response to questions from the bench, Kempton admitted that Iseminger had questioned him during early October concerning favoritism.

<sup>14</sup>Swacina credibly so testified without controversy.

<sup>15</sup>Venable testified to his title under oath and was shown to have hired, disciplined, and assigned work to employees. I therefore find that he was a supervisor within the meaning of the Act.

<sup>16</sup>The foregoing findings are based on the mutually corroborative testimony of Holbrook and Kempton.

he would be watching her and he was going to write her up every time she turned around.<sup>17</sup> I infer from Kempton's comment to Lord and his questioning of Swacina that (1) he believed that Holbrook and Floyd had criticized him to his superiors at the negotiating session and (2) he was upset with them for so doing. I therefore find that the motivation for Kempton's threat to Holbrook was his agitation over her protected behavior rather than any failure on her part to call him to the front of the store. For the foregoing reasons, I find that Respondent violated Section 8(a)(1) of the Act by threatening to discipline Holbrook because of her participation in the October 1 negotiating session.

## 3. The discharge

On October 14, Swacina returned to the store to speak with Kempton concerning a grievance she had filed while still in Respondent's employ. During a conversation in the breakroom, Kempton asked whether it had been Holbrook or Floyd who told his superiors that his children were running around the store and that "he couldn't do his job." Swacina responded that she had never heard Holbrook or Floyd make either of the statements.<sup>18</sup>

At 3:30 on the afternoon of October 31, Floyd, the store's head checker who had been employed by Respondent for 17 years, was called into the breakroom to meet with Kempton and Venable. Kempton handed Floyd an employee correction notice which stated that she was responsible for failing to remove approximately \$1000 worth of out-of-date health and beauty products from the store's shelves. Floyd signed the notice and wrote the following comments on it: "I feel like Mike is nitpicking. He is mad about something I've done." After Kempton added a further note which read, in part, "I'm not mad at anyone and I'm only doing my job," he told Floyd that she was fired.<sup>19</sup> An addendum to the notice which was prepared by Kempton after Floyd left the premises stated that "the only reasons" for Floyd's termination were her failures to properly stock health and beauty products.

The General Counsel's contention that Floyd was discharged in retaliation for her protected activity is based on the following facts: (1) her termination closely followed the discovery of her protected activity; (2) her discipline was disparate in nature, in that other employees who failed to remove dated merchandise, including perishable foodstuffs,

<sup>17</sup>Holbrook's testimony to this effect was detailed and consistent. In response to leading questions from Respondent's counsel, Kempton affirmed that he did not "know" of any derogatory statements about him by Holbrook and he did not threaten her with "disciplinary action because of anything said by her . . . in any bargaining session." Given the disproportionate nature of Kempton's admitted reaction, my prior findings which demonstrate that Kempton was upset over statements he believed Holbrook and Floyd had made to Taylor at the bargaining session and the fact that he felt he was "in trouble" with his superiors as a result of those statements, I credit Holbrook's account over Kempton's testimony that he told her that he "was going to pay close attention to [her failure to call him to the front of the store] and watch it to make sure that she did do that."

<sup>18</sup>Swacina so testified without controversy.

<sup>19</sup>The foregoing facts concerning the October 31 meeting appear to be undisputed.

were not disciplined;<sup>20</sup> (3) Respondent failed to demonstrate that it followed its progressive discipline policy in discharging Floyd;<sup>21</sup> and (4) Respondent's animus toward Floyd's protected activity was demonstrated by Kempton's interrogation of Swacina, his comment to Lord, and his threat to Holbrook.<sup>22</sup> Based on the facts set out above, I find that the General Counsel made a prima facie showing that Floyd's protected activities at the October 1 negotiating session were a "motivating factor" in her termination.<sup>23</sup> See *Wright Line*, 251 NLRB 1083, 1089 (1980).

Respondent contends that Floyd was discharged for cause. The testimony adduced from Respondent's witnesses did not establish the veracity of this contention. Initially, Respondent maintained that Iseminger's "main reason" for going to the Houston store at the beginning of October was to hire a new produce manager and that he could "not remember" being told at that time that Kempton had been criticized for showing favoritism to DeMaria.<sup>24</sup> As a hostile witness called by the General Counsel, Iseminger testified that the "main thing" he meant to accomplish at the Houston store was to carry out Taylor's instructions to determine whether Kempton was having an affair with one of the checkers. Iseminger's further testimony that he completed his investigation without ever talking with Kempton is controverted by the latter's admission that Iseminger in fact questioned him about favoritism toward DeMaria.<sup>25</sup> Similarly, Kempton's testimony that he was not aware of rumors of his favoring DeMaria was directly controverted by Venable's credible testimony of having informed Kempton of such rumors prior to September 1991. Prior to the hearing, it was Respondent's position that Kempton was not upset with either Holbrook or Floyd during October and that, at the time the decision was made to fire Floyd, neither Iseminger nor Kempton "knew about" any criticism of Kempton by either employee.<sup>26</sup> Based on the findings set out above, I find this position to be totally unsupported by the probative evidence of record. The discharge notice completed by Kempton pursuant to Iseminger's instructions explicitly ascribed Floyd's termination solely to her failure to properly stock health and beauty products. At the hearing, Respondent attempted to ex-

pand the grounds for the discharge through Iseminger's testimony that Floyd was fired due to the out-of-date products, other corrective action notices in her personnel file, and what he admitted were uninvestigated customer complaint letters.

The documentary evidence proffered by Respondent in support of its position was similarly less than compelling. It was Respondent's position before the hearing that documents generated prior to the discharge demonstrated the necessity of returning out-of-date health and beauty products with a wholesale value of \$1,012.32,<sup>27</sup> and Iseminger testified at the outset of the hearing that he had these documents in his possession and relied on them in deciding to discharge Floyd. When it was conclusively demonstrated that most of the documents in question did not relate to health and beauty products for which Floyd was responsible and that some of the documents were generated subsequent to the discharge, Iseminger (1) gradually recanted his testimony concerning the content of the documents and his possession of and reliance on them<sup>28</sup> and (2) testified that he received an estimate of \$1000 from Kempton by telephone between October 28 and 30, that he discussed the matter with Taylor on October 31 and, after receiving Taylor's approval, that he telephonically instructed Kempton on October 31 to fire Floyd. Kempton refuted Iseminger's account of a considered decision reached after consultation by testifying that he called Iseminger on October 31 with the \$1000 figure and received Iseminger's instructions to discharge Floyd during the same telephone call.

Given the internally and logically inconsistent representations, testimony, and documents concerning Floyd's termination which flowed from Respondent's counsel and managerial personnel, I find that Respondent has not met its burden of demonstrating that it would have terminated Floyd absent her protected conduct. Accordingly, I conclude that Floyd's discharge was violative of Section 8(a)(3) of the Act. See *Wright Line*, supra.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The July 14, 1992 allegation of discharge for engaging in a specific protected concerted activity is not significantly at variance with the December 26, 1991 allegation of termination for engaging in protected concerted activity in general.

4. The charges in this proceeding were timely filed.

5. Deferral to arbitration is inappropriate under the facts of this case.

6. By threatening to discipline an employee for engaging in protected concerted activity, Respondent has engaged in an unfair labor practice in violation of Section 8(a)(1) of the Act.

<sup>27</sup> Respondent's position letter.

<sup>28</sup> At the close of the hearing, Respondent produced documents which did support its position that over \$1000 worth of out-of-date products were returned for credit, but the surprise appearance of this evidence in no way explains Iseminger's original testimony that he had documentary evidence in hand on October 31 which caused him to decide to discharge Floyd.

<sup>20</sup> Several employees testified to this effect without controversy.

<sup>21</sup> In response to questions from the bench, Kempton indicated that Respondent had a progressive discipline policy, and the record is bare of evidence that the policy was employed in connection with Floyd's discharge.

<sup>22</sup> On brief, the General Counsel contends that animus toward Floyd was also shown by a 1988 written warning which "was a direct result of Floyd's activities as a union steward" on behalf of a fellow employee. I reject Floyd's testimony to this effect since the warning, which she signed, was explicitly based solely on her efforts to secure personal preferment and made no mention of any activity by her on behalf of any other person.

<sup>23</sup> Respondent contends that, after being discharged, Floyd was insubordinate to Kempton and Venable. Although this contention may be material to a determination of damages, I find it to be without relevance to the question of whether Floyd's termination was unlawful at the time it occurred.

<sup>24</sup> Respondent's December 7, 1991 position letter to the General Counsel (position letter).

<sup>25</sup> Kempton's repeated admission to this effect is supported by Swacina's credited testimony. See note 13 and accompanying text, supra.

<sup>26</sup> Respondent's position letter.

7. By discharging an employee for engaging in protected concerted activity, Respondent has engaged in an unfair labor practice in violation of Section 8(a)(1) and (3) of the Act.

8. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that Respondent engaged in certain unfair labor practices, I find that it must be ordered to cease those practices and to take affirmative action designed to effectuate the policies of the Act. Because Respondent discriminatorily discharged an employee, it must make her whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>29</sup>

#### ORDER

The Respondent, Roswil, Inc., d/b/a Ramey Supermarkets, Houston, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening any employee with discipline for engaging in protected concerted activities.

(b) Discharging or otherwise discriminating against any employee for engaging in protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Vicki Floyd immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful discharge and notify Vicki Floyd in writing that this has been done and that the discharge will not be used against her in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records,

<sup>29</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Houston, Missouri, copies of the attached notice marked "Appendix."<sup>30</sup> Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>30</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten any of you with discipline for engaging in protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Vicki Floyd immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed and WE WILL make her whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest.

WE WILL notify Vicki Floyd that we have removed from our files any reference to her discharge and that the discharge will not be used against her in any way.

ROSIL, INC. D/B/A RAMEY SUPERMARKETS